court, of all the works and property of an internal improvement company—such as a railroad, telegraph, canal etc. company—and this, as it seems, though the franchise be not expressly mentioned in the deed of trust or mortgage: Va. Code 1887, secs. 1233–4, 1236; Acts 1891–2, p. 623.

STATUTE OF LIMITATIONS AGAINST MUNICIPAL CORPORATIONS.—In dealing with the question of adverse possession, and the right to plead the statute of limitations, against a municipal corporation, it must be borne in mind that such a corporation presents a double character—one public, and the other, in a certain sense, private. As respects property not held for the benefit of the whole public, nor upon public trusts, and contracts and rights of a private nature, municipal corporations are no more exempt from the operation of the statute of limitations than are private individuals. So that in an action on a contract or for an ordinary tort, or for the recovery of ordinary personal property, a municipal corporation is barred by limitation wherever an individual would be. But where the property in question is held for the benefit of the general public, or on inalienable public trusts, such as streets, parks, and other public places, no *laches* on the part of the municipal authorities will defeat the right of the public therein: 2 Dillon Munic. Corp. (4th ed.), 667–675; *Taylor's Case*, 29 Gratt. 780; *Yates v. Warrenton*, 84 Va. 337 (10 Am. St. Rep. 860). See also *Manchester etc. Co. v. Manchester*, 25 Gratt. 825; *Norfolk v. Chamberlaine*, 29 Gratt. 534.

While the doctrine stated above with respect to public, as distinguished from private, property of a municipal corporation, prevails in Virginia, and is sanctioned by Judge Dillon, the great oracle of the law of this subject, there is a formidable array of opposing authorities which repudiate the distinction, and hold that the adverse possession of a street, highway, park or of other public property, continued for the statutory period, will operate as a bar against the municipal corporation as effectually as against a private person. Judge Dillon himself adopted this view in an earlier edition of his great work on Municipal Corporations. The courts of New York, Pennsylvania, California, New Jersey, Tennessee, Massachusetts, and others, adopt the view taken by the Virginia courts, but the contrary doctrine prevails in West Virginia, Iowa, Illinois, Kentucky, New Hampshire, Arkansas, and doubtless in other states.

The authorities are collected and discussed in 2 Dillon Munic. Corp. *ubi sup.*, and in an extensive note to *Orr v. O'Brien* (Iowa), 14 Am. St. Rep. 278–282. The contrary view is strongly presented in *Wheeling v. Campbell*, 12 W. Va. 36, the opinion in which case is quoted almost entire in note to *Fort Smith v. McKibbin*, (Ark.), 48 Am. Rep. 24.

THE NAME OF A CORPORATION—(1) *Right to exclusive use.* A corporation has the right to the exclusive use of its name, properly acquired—a right which a court of equity will by injunction protect from infringement, on the same principle that it protects trade-marks. And in order to constitute an infringement, it is not essential that the names be identical; it is sufficient that the similarity is calculated to deceive the unwary public, or otherwise injure or interfere with the business of the company having the prior right. Nor can the defendant justify

the infringement on the ground that its own name was acquired by legislative grant or by order of the court. Neither the legislature nor the court can, in an *ex parte* proceeding, interfere with a vested right. 1 Morawetz Corp. (2d ed.) 296, 357; 1 Thompson Corp. 296 *et seq*; *Holmes, Booth & Haydens v. Holmes, Booth & Atwood Co.*, (Conn.), 9 Am. Rep. 324; *Celluloid Mfg. Co. v. Cellonite Mfg. Co.*, 32 Fed. Rep. 94; *Le Page Co. v. Russia Cement Co.*, 51 Fed. Rep. 942; *Chas. S. Higgins Co. v. Higgins Soap Co.* (N. Y.), 43 Am. St. Rep. 769 and note; note to *Partridge v. Menck* (N. Y.) 47 Am. Dec. at p. 286. But not so, if the name be merely descriptive of the business in which the corporation is engaged, for, as said by the Supreme Court of the United States in the case cited below, if a corporation could, by prior appropriation, claim the exclusive right to such a name, a practical monopoly of the trade in that particular line might be thus secured to it. It was accordingly held that the name "Goodyear Rubber Company" could not be exclusively appropriated, since "Goodyear Rubber" was a term descriptive of well known classes of goods produced by the process known as Goodyear's invention—an old process not belonging to either of the rival companies. The court said that an analogous case would be presented if a corporation should claim the exclusive use of the name "Virginia Tobacco Company," "Kentucky Hemp Company," "Pennsylvania Wheat Company," or "Sea Island Cotton Company"—names indicating merely the articles dealt in: *Goodyear's India Rubber Glove Mfg. Co. v. Goodyear Rubber Co.*, 128 U. S. 598. It would seem, under this view, that while a corporation might not appropriate the name "Maine Ice Company," or "Cuban Banana Company," it might claim the exclusive right to the names reversed—"Maine Banana Company" or "Cuban Ice Company," because the latter names could scarcely be descriptive of the business in which such companies would be engaged. Some such distinction seems to have been in the mind of the court in the *Fig Syrup Case* (54 Fed. Rep. 175—4 C. C. A. 264), where it was adjudged that the term "Fig Syrup," though apparently descriptive of the medicinal preparation to which it was applied, was really not descriptive, since such a term as 'fig syrup' was unknown before the complainant adopted it, and because, in fact, this particular so-called fig syrup *was not what it purported to be!* it was not fig syrup, pure and simple, was but compounded with other ingredients.

(2) *Mistake in name*—(a) *In judicial proceedings.* Where the mistake in the name of the corporation, whether plaintiff or defendant, is slight, and it clearly appears what corporation is meant—or, as it is sometimes expressed, where the pleading incorrectly *names* a corporation, but correctly *describes it*—the mistake is amendable, and can be taken advantage of only by plea in abatement. But where the error is so material (especially, it is said, in the name of the defendant) that *no such* corporation exists, it is fatal at the trial: 1 Thomp. Corp. 290 *et seq;* 1 Morawetz Corp. (2d ed.) 354–5; *Bank of Va. v. Craig*, 6 Leigh, 399; *Mason v. Farmers Bank*, 12 Leigh 90. Nor is the result last stated obviated, as it would seem, by the provision of section 3258 of the Virginia Code, which applies only where the misnomer was pleadable in abatement at common law. Especially is it fatal to the maintenance of the suit, if the individuals composing the corporation sue in their own names, though describing themselves as constituting the corporation. Thus where certain persons sue as "A, B, C, etc. constituting the School Board of T county" (declared by statute to be a corporation), such suit

cannot be maintained as the suit of the corporation: *Stewart & Palmer v. Thornton*, 75 Va. 215; *People v. Fulton*, 11 N. Y. 94.

(b) *In grants, contracts, wills, etc.* Here, if it can be satisfactorily determined by evidence *aliunde* what corporation was intended, the courts will generally give effect to the intention, regardless of the error in the name: 1 Thomp. Corp. 294–5; 1 Morawetz Corp. 354; *Culpeper Soc. v. Digges*, 6 Rand. 165 (18 Am. Dec. 708); *Trustees v. Guthrie*, 86 Va. 125.

CONFUSION OF GOODS BY MUTUAL CONSENT.—This is a frequent case when wheat of many owners is deposited in a mill or a grain-elevator, by way of bailment, with the understanding on the part of all the owners that the grain may be thrown together in a common mass. The law in such a case is that all the owners become tenants in common of the mass. Thus, in *Dale v. Olmstead*, 36 Ill. 150, a case of grain warehousemen, it is said: "The corn of all having been intermingled, according to usage with warehousemen, and without objection of the several owners, it became common property, owned by all in the proportions in which they had contributed to the common stock. This is so from the very necessity of the case, because, so soon as it is intermingled, each person's portion loses its identity, and can no longer be distinguished or separated from the common mass. Neither of the owners could point out, separate, or prove that any particular portion was his. Neither can it be shown when a portion has been lost or appropriated, whose particular corn it was. It being then in common, they are liable to sustain any loss which may occur by diminution, decay or otherwise, in the same proportion."

But, in case of such deposits, an interesting question frequently arises as to the true nature of the transaction, whether, under the circumstances, it may not amount to a *sale* of the mass of the grain to the miller or other depositary, and so throw the whole loss on him in case of accidental destruction by fire or other cause. In *Reherd v. Clem*, 86 Va. 374, the rule is thus laid down: Where the article delivered is to be returned, though in an altered form (*e. g.*, wheat after it is made into flour), the transaction is a bailment, and the title of the property is unchanged; but where another thing, of equal value, may be returned, the title passes to the receiver, and the transaction is a sale. See, in accord, *Bretz v. Diehl*, 117 Pa. St. 589 (2 Am. St. R. 706); *Barnes v. McCrea*, 75 Iowa, 267 (9 Am. St. Rep. 473). Thus, if the understanding of those who deliver wheat into a mill or elevator is that the person receiving the grain might take from it or the flour at his pleasure, and appropriate the same to his own use, on condition of procuring other wheat or flour to supply its place, the dominion over the property passes to the depositary, and the transaction is sale, not bailment. But although the wheat of many owners is, by their consent, mixed by a miller, yet if his contract is to redeliver to the owners of the mass flour made *from that mass*, in proportion to their respective interests, with no power to appropriate to himself or to sell to others either the wheat, or the flour made from it, so that all the wheat is to be returned to all the owners as flour, though no owner may get the flour made from his particular wheat, the transaction is a bailment; and if the wheat be destroyed, the loss falls not on the miller, but on the owners of the wheat. See *Slaughter v. Green*, 1 Rand. 3; 2 Schoul. P. P. sec. 46.